

**United States Department of Labor  
Employees' Compensation Appeals Board**

M.K., Appellant	)	
	)	
and	)	Docket No. 25-0016
	)	Issued: December 4, 2024
DEPARTMENT OF HOMELAND SECURITY,	)	
FEDERAL AIR MARSHAL SERVICE,	)	
Egg Harbor Township, NJ, Employer	)	
	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On October 8, 2024 appellant filed a timely appeal from a May 10, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that following the October 8, 2024 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## ISSUE

The issue is whether appellant has met his burden of proof to establish a left shoulder condition causally related to the accepted November 28, 2023 employment incident.

## FACTUAL HISTORY

On November 30, 2023 appellant, then a 40-year-old general inspection, investigation and compliance federal air marshal filed a traumatic injury claim (Form CA-1) alleging that on November 28, 2023 he developed pain in his left shoulder while performing control tactics, knife defense drills and an arm bar take down, while in the performance of duty. On the reverse side of the claim form, appellant's supervisor acknowledged that he was injured in the performance of duty. Appellant did not stop work.

In a December 15, 2023 form report, Dr. Imran A. Khan, a Board-certified orthopedic surgeon, diagnosed left shoulder rotator cuff tendinopathy and noted a date of injury of November 28, 2023. He released appellant to modified duty with restrictions. In a December 15, 2023 ambulatory referral, Dr. Khan provided a diagnosis of tendinopathy of left rotator cuff and referred appellant to physical and occupational therapy.

OWCP also received physical therapy notes dated January 3 through 30, 2024.

On January 17, 2024 Dr. Khan modified his instructions to physical therapy for the diagnosed left rotator cuff tendinopathy. In form reports dated January 17 and February 14, 2024, he continued to opine that appellant could work modified duty with restrictions due to his left shoulder rotator cuff tendinopathy. Dr. Khan indicated, in his February 14, 2024 form, that the November 28, 2023 injury occurred during self-defense training. On February 14, 2024 he also referred appellant for a left shoulder magnetic resonance imaging (MRI) scan with arthrogram for associated diagnoses of tendinopathy of left rotator cuff and traumatic incomplete tear of left rotator cuff.

In a development letter dated February 27, 2024, OWCP informed appellant of the deficiencies in his claim. It also advised appellant of the type of factual and medical evidence needed, provided him with a questionnaire, and afforded him 60 days to respond.

Thereafter, OWCP received a March 15, 2024 referral from Dr. Khan for continued physical therapy for appellant's tendinopathy of left rotator cuff and traumatic incomplete tear of left rotator cuff. Additional physical therapy reports were also received.

In a follow-up letter dated March 25, 2024, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish his claim. It noted that he had 60 days from the February 27, 2024 letter to submit the requested supporting evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

OWCP received additional physical therapy reports.

By decision dated May 10, 2024, OWCP denied appellant's traumatic injury claim, finding that he had not established a left shoulder condition causally related to the accepted November 28, 2023 employment incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>4</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is whether the employee actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused an injury and can be established only by medical evidence.<sup>6</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>7</sup> A physician's opinion on whether there is a causal relationship between the diagnosed condition and the employment injury must be based on a complete factual and medical background.<sup>8</sup> Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's employment injury.<sup>9</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment,

---

<sup>3</sup> *Supra* note 1.

<sup>4</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *B.H.*, Docket No. 20-0777 (issued October 21, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>6</sup> *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>7</sup> *R.P.*, Docket No. 21-1189 (issued July 29, 2022); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>8</sup> *S.W.*, Docket No. 24-0302 (issued July 26, 2024); *R.P., id.*; *F.A.*, Docket No. 20-1652 (issued May 21, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>9</sup> *Id.*

nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a left shoulder condition causally related to the accepted November 28, 2023 employment incident.

Dr. Khan, in his reports dated December 15, 2023, and January 17, February 14, and March 15, 2024, diagnosed tendinopathy of left rotator cuff and traumatic incomplete tear of left rotator cuff and provided a November 28, 2023 date of injury. However, Dr. Khan did not offer an opinion regarding causation. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>11</sup> As such, these reports of Dr. Khan are of no probative value and are insufficient to establish appellant's claim.

The remainder of the medical evidence consists of reports from physical therapists. However, the Board has held that medical reports signed by a nurse, a physical therapist, or a physician assistant are of no probative value, because these medical providers are not considered physicians as defined under FECA.<sup>12</sup> Consequently, their medical findings or opinions are insufficient to meet appellant's burden of proof.

As appellant has not submitted rationalized medical evidence establishing a left shoulder condition as causally related to the accepted November 28, 2023 employment incident, the Board finds that he has not met his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

---

<sup>10</sup> *S.W.*, *supra* note 8; *T.M.*, Docket No. 22-0220 (issued July 29, 2022); *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *see also J.L.*, Docket No. 18-1804 (issued April 12, 2019).

<sup>11</sup> *G.M.*, Docket No. 24-0388 (issued May 28, 2024); *C.R.*, Docket No. 23-0330 (issued July 28, 2023); *K.K.*, Docket No. 22-0270 (issued February 14, 2023); *S.J.*, Docket No. 19-0696 (issued August 23, 2019); *M.C.*, Docket No. 18-0951 (issued January 7, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>12</sup> Section 8101(2) of FECA provides that a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *A.M.*, Docket No. 20-1575 (issued May 24, 2021) (physical therapists are not physicians as defined by FECA); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as nurses, physician assistants, and physical therapists are not competent to render a medical opinion under FECA).

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish a left shoulder condition causally related to the accepted November 28, 2023 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 10, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 4, 2024  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board